

The Public Record

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POINTS OF INTEREST

- For upcoming training opportunities visit our website at www.azoca.gov and click on presentations.
- For previous newsletters visit our website and click on newsletters/reports.
- Open Meeting Law Booklets and Public Records Law Booklets are available online. Updates are available under Recent Developments.

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Notice of Meetings: What if more than one statute applies?

Notice of meetings under the Open Meeting Law is essential. In Arizona, providing notice is really a two step process. The public body must file a disclosure statement, as designated under A.R.S. § 38-431.02(A). This identifies where public notices of its meetings will be posted. Once the disclosure statement has been filed, the public body must give notice of each of its meetings by posting a copy of the notice in the public place identified in the disclosure statement and by giving additional notice as is reasonable and practicable.

Public bodies of cities and towns that have an internet website must also post all notices of their meetings on the website.

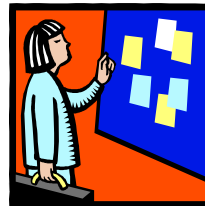
The notice should identify the name of the public body, and the date, time, and place of the meeting including the specific street address and room number. The notice must also include an agenda of the matters the public body will consider at the meeting.

Generally, pursuant to A.R.S. § 38-431.02(C), the public body must provide at least 24 hours notice of all meetings. There are three exceptions: 1) notice of a meeting at which the public body will consider ratifying a prior act must be given 72 hours notice; 2) actual emergencies, and 3) meetings may be recessed and resumed with less than 24 hours notice.

But, sometimes, a second statute also requires specific notice of a particular meeting. For instance, before recommending a county plan to the board of supervisors, A.R.S. § 11-822 requires that the planning and zoning commission hold at least one public hearing and provide at least fifteen days notice of the hearing in a newspaper of general circulation in the county seat as well as publishing notice in a newspaper of general circulation in the area to be affected.

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Notice must be posted in a place where the public has reasonable access.

“Confidential” Public Records: Oxymoron?

How can public records be confidential? Isn't that contradictory? These are questions we receive on a regular basis. While it might sound contradictory, public records are not always open for public inspection. They might be open, confidential, or a combination of both.

Arizona law does not define public record. Indeed, it provides that officers and public bodies “shall maintain all records, including records as defined in section 41-1350, reasonably necessary or appropriate to maintain accurate knowledge of their official activities and of any activities

which are supported by monies from the state or any political subdivision of the state.” Arizona Revised Statutes § 41-1350 defines “record” as all books, papers, maps, photographs or other documentary materials, regardless of physical

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“Confidential” Public Records



Typically, medical records created or obtained by public bodies are confidential by statute.

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form or characteristics....”
The simple answer is that this typically includes everything created or received by a government entity or employee that relates to public business.
The rule of thumb is that a public record is open for public inspection. In Arizona, the custodian of public records may only deny access when: 1) the record is made confidential by law, 2) the record involves a privacy interest that out-

weighs the public’s right to know, or 3) disclosure would be detrimental to the best interests of the State. The latter two are discretionary balancing tests established by case law that the custodian must apply on a case-by-case basis.

Here are some examples:

- Many public records are deemed confidential by federal or state statute. These records include tax returns, student educa-

tion records, criminal history record information, and meeting minutes of executive sessions. Currently, there are over 300 Arizona statutes that make various records confidential.

- Other records, or portions thereof, may be kept confidential at the discretion of the lawful custodian. This might include information in personnel

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“Make sure the agenda contains information that is reasonably necessary to inform the public of the matters to be discussed or decided.”

Clear and Effective Agendas

It’s Monday morning and you have a public meeting scheduled for Tuesday at noon. You know you have to have your agenda available to the public within the next hour to meet the 24 hour deadline. But are you taking the time to make sure your agenda is clear and effective?

Agendas for public meetings play a vital role. Good agendas

keep citizens informed and help public officials be better prepared for meetings. To accomplish this, agendas must be understandable. Use common and ordinary language. Avoid legalese, technical terms, and acronyms. Make sure the agenda contains information that is reasonably necessary to inform the public of the matters to be discussed or de-

cid. This means, the agenda must be specific. Of course, the precise detail needed to communicate effectively will depend on the situation. For example: an agenda listing “City Manager’s annual performance evaluation” is probably sufficient to inform the public that the city council is performing the city manager’s

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“Notice of meetings under the Open Meeting Law is essential.”



Notice of Meetings....

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Under such circumstances, the public body must comply with both statutes. Contrary to what many believe, failure to comply with the requirements set forth in statutes other than Title 38, Chapter 3,

Article 3.1, is not an open meeting law violation. Even so, public officials should take steps to avoid confusion and assure all appropriate notices reach the public.



Clear and Effective Agendas



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annual evaluation, but would not be sufficient to alert the public about a general discussion of the city manager's new programs.

Clear and effective agendas are a matter of law.

Moreover, agenda items such as new business, old business, other matters, or reports alone are never enough. The specific matters must be separately identified under each heading. For instance: what items of new business, what items of old business, what other matters, and precisely who is reporting and on what?

One exception is current events. The chief administrator, presiding

officer or a member of a public body may present a brief summary of current events without listing the specific matters to be summarized provided that "Current Events" is listed as an agenda item and the public body does not propose, discuss, deliberate, or take legal action.

Public bodies are well advised to take care in preparing good agendas. It's a matter of good policy and a matter of law.

"Agenda items such as new business, old business, other matters, or reports alone are never enough."

Record Retention and Training

By Jerry Kirkpatrick, Records Management Specialist, Arizona State Library and Archives

The Arizona State Library, Archives and Public Records (ASLAPR) is charged with preserving the historical public records of our State. We have developed General Retention Schedules for most government entities in the State, and these general schedules provide direction and guidance on how long public records must be retained by public bodies. There are entirely new General Retention Schedules avail-

able for State Agencies (07/2007), School Districts (11/2007), and Fire Districts (12/2007). There are partial General Schedule updates available for Counties and Municipalities (02/2008).

We also offer training on the major aspects of Records Management: the basics (including A.R.S. requirements), records retention and disposition, and electronic records.

We now offer on-line training, training at our Records Center (near the State Capitol) and training at your location (for groups of 10 or more). You will find information on all of the Retention Schedules and Training at our website: www.lib.az.us/records/

Winter Highlights

TWO NEW OPINIONS

The Arizona Court of Appeals issued two new public record opinions in December and January:

Arpaio v. Citizen Publishing Co., — P.3d —, 2008 WL 5340884 (Ct. App. Div. 2 Dec. 18, 2008)

David Lake v. City of Phoenix, — P.3d —, 2009 WL73256, (Ct. App. Div. 1 Jan. 13, 2009)

Summaries of the decisions will be available on our website soon!

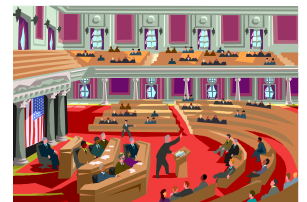
THE LEGISLATURE IS IN SESSION

It's that time of year again. The 2009 legislative session begins Monday, January 12, 2009. Keep your eyes and ears open for bills affecting the public record and open meeting laws.

We made recommendations related

to the following: clarification as to what personal information should be withheld from public records, access to electronic records, fees for electronic records, and several open meeting law clarifications.

For information on the legislative process, committee agendas, and bills go to the Legislature's website at www.azleg.gov.



The 2009 Legislature shall assemble on January 12, 2009.



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Happy New Year! We hope you enjoy our first newsletter of 2009. As always, if you have questions or comments, please feel free to contact Liz Hill directly at 602-285-9136 ext. 32 or ehill@azoca.gov.

We wish everyone the best in 2009.

“Confidential” Public Records

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- records, birthdates, and autopsy reports in some circumstances.
- Some records may be withheld because disclosure would be detrimental to the best interests of the State and cause substantial or irreparable harm. This might change over time and may not be used to save an officer or public body from inconvenience or embarrassment or simply because the records might be used to establish liability on the part of the government. For example: disclosure of investigatory records may be detrimental to the best interests of the State during an on-going investigation, but may no longer have a detrimental effect once the investigation is closed. At that point, they must

be made available.

- Often, a single document contains both public and confidential information. For example, a social security number, a victim’s contact and identifying information or home address and telephone number of a peace officer may be confidential, but appear on a record that is otherwise open for examination and copying.



In such situations, the custodian must devise a

way to provide access to the public information, while shielding the confidential information. If inspection or copying of paper records is provided, this may be done by redacting (blacking out) the confidential information. If electronic records are provided, this might be accomplished by using redaction software programs. If confidential material has been attached to an otherwise disclosable document, the material attached may simply be removed.

The requester should be told what information has not been provided and the reason why. In addition, the public body should indicate in its records precisely which material was removed and which was released.

Criminal history records are confidential pursuant to A.R.S. §41-1750.